



Southern Grampians
SHIRE COUNCIL

Councillor Code of Conduct

10 October 2018

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COUNCILLOR CODE OF CONDUCT

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with the *Local Government Act 1989*, was adopted by resolution of the Southern Grampians Shire Council on 8 February 2017.

1. INTRODUCTION

As custodians of the Southern Grampians Shire Council, Councillors hold a unique and important leadership role within Victoria. This role is recognised in the *Local Government Act 1989* (the Act) which describes the role and responsibilities of the Council, Mayor, Councillors and Chief Executive Officer.

As Councillors we commit to carrying out our role to the highest standards of conduct and behaviour. As part of this commitment all Councillors will adhere to the conduct principles, values and processes outlined in the Act and this Councillor Code of Conduct.

As Councillors of the Southern Grampians Shire Council we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

This Code:

- sets out the standards of conduct expected of elected representatives;
- endeavours to foster good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
- mandates councillor conduct designed to build public confidence in the integrity of local government.

2. APPLICATION OF THE CODE OF CONDUCT

A Councillor must observe the Code of Conduct whenever he or she:

- a) Conducts the business of Council;
- b) Conducts the business of the office to which he or she has been elected or appointed;
- c) Acts as a representative of Council; and
- d) Is in any dealings with the public and/or generally in the public arena.

This Code of Conduct does not apply to Council Staff. Council Staff are bound by the Staff Code of Conduct.

3. ROLES AND RESPONSIBILITIES

Our primary role as Councillors is to set the vision and direction for the Southern Grampians Shire Council; to advocate on behalf of the whole community; and to make a range of decisions on issues which affect the community.

The business of Council will be conducted in a professional manner with efficiency and impartiality; whilst demonstrating compassion and sensitivity towards the needs of the community. We acknowledge our obligations as Councillors to carry out our duties in the best interests of the community and in accordance with the Act.

The primary role of the Council is to provide leadership for the good governance of the Southern Grampians Shire. The role of the Council also includes:

- 3.1. acting as a representative government by taking into account the diverse needs of the local community in decision making;
- 3.2. providing leadership by establishing strategic objectives and monitoring their achievement;
- 3.3. maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- 3.4. advocating the interests of the local community to other communities and governments;
- 3.5. acting as a responsible partner in government by taking into account the needs of other communities; and
- 3.6. fostering community cohesion and encouraging active participation in civic life.

ROLE OF MAYOR AND COUNCILLORS

Section 73 states that the mayor takes precedence at all municipal proceedings within the municipality, the mayor must chair all meetings of the council (when present), and the mayor has a casting vote when required.

Section 73AA of the Act describes the functions of the Mayor as including:

- a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- b) acting as the principal spokesperson for the council; and
- c) supporting good working relations between Councillors; and
- d) carrying out the civic and ceremonial duties of the office of Mayor.

Section 65 of the Act provides that the role of a Councillor is:

- a) to participate in the decision-making of the Council; and
- b) to represent the local community in that decision-making; and
- c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of a Councillor, a Councillor must:

- a) consider the diversity of interests and needs of the local community; and
- b) observe principles of good governance and act with integrity; and
- c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
- d) participate in the responsible allocation of the resources of Council through the annual budget; and
- e) facilitate effective communication between the Council and the community.

The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.

FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER

The Chief Executive Officer is responsible for:

- a) establishing and maintaining an appropriate organisational structure for the Council; and
- b) ensuring that the decisions of the Council are implemented without undue delay; and
- c) the day to day management of the Council's operations in accordance with the Council Plan; and
- d) developing, adopting and disseminating a code of conduct for Council staff; and
- e) providing timely advice to the Council; and
- f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- g) supporting the Mayor in the performance of the Mayor's role as Mayor;
- h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

RELATIONSHIPS WITH STAFF

As Councillors we will work as part of the Council team with the Chief Executive Officer and other members of staff. There must be mutual respect and understanding between Councillors and officers in relation to their respective roles, functions and responsibilities.

Our role is one of advocacy and leadership rather than management and administration. The Chief Executive Officer is responsible for all staff matters.

As Councillors, we will be aware of the requirements of Section 76E of Local Government Act 1989 and must not seek to improperly direct or influence members of Council staff in the exercise of their duties.

4. LEGISLATIVE REQUIREMENTS

The Act Requires that:

1. A Councillor Code of Conduct:
 - a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct;
 - b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - c) must include any provisions prescribed for the purpose of this section;

- d) must include provisions addressing any matters prescribed for the purpose of this section;
 - e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
2. A Council must, within 4 months after a general election:
- a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
 - b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
3. A copy of this Code of Conduct (as amended from time to time) must be:
- a) given to each councillor;
 - b) available for inspection at the council office and any district offices; and
 - c) published on the Council's internet website.
4. From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of Councillors to ensure that they are conversant with, and comply with, the provisions of this Code.
5. Failure by a Councillor to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a Councillor.

5. COUNCILLOR CONDUCT PRINCIPLES

The Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions. As Councillors, we undertake to comply with the various provisions of the Act and with this Code of Conduct.

Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

We endorse and agree to the following Councillor Conduct Principles specified in sections 76B and 76BA of the Act:

- 1. In carrying out their role as Councillors, we will:
 - a) act with integrity; and
 - b) impartially exercise our responsibilities in the interests of the local community; and

- c) not improperly seek to confer an advantage or disadvantage on any person.
- 2. In addition, in performing our role as Councillors we will:
 - a) avoid conflicts between his or her public duties as a councillor and our personal interests and obligations;
 - b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons;
 - d) exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office;
 - e) endeavour to ensure that public resources are used prudently and solely in the public interest;
 - f) act lawfully and in accordance with the trust placed in ourselves as an elected representative;
 - g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of councillor.

6. COUNCILLOR BEHAVIOURS

We confirm that we will adhere to the following principles of behaviour in our general conduct as Councillors:

- 1. Treating all people with **courtesy and respect**, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:
 - a) Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused
 - b) Treating fellow Councillors with respect, even when disagreeing with their views or decisions
 - c) Debating contentious issues without resorting to personal acrimony or insult
 - d) Ensuring punctual attendance at Council and committee meetings
 - e) Acting with courtesy towards Council staff and avoiding intimidatory behaviour.
- 2. Always acting with integrity and honesty:
 - a) Being honest in all dealings with the community, with other Councillors and with Council staff
 - b) Always acting with impartiality and in the best interests of the community as a whole

- c) Not acting in ways that may damage the Council or its ability to exercise good government
 - d) Exercising reasonable care and diligence in performing our functions as Councillors
 - e) Complying with all relevant laws, be they Federal, State or Local Laws.
3. Recognising that we hold a **position of trust** which we will not misuse or derive undue benefit from our positions:
- a) We will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest
 - b) We will not exercise undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain an advantage for ourselves
4. Refraining from bullying, intimidating and harassing behaviours including, but not limited to, verbal abuse, offensive language, bad-mouthing subordinates, finding fault when inappropriate to do so, disparaging or snide, yelling, shouting or unnecessarily loud comments, exhibiting contempt as a substitute for soundly based disagreement, using position to interfere in lines of managerial responsibility by insisting on the supply of information outside the managerial line of responsibility, aggressive expression of opinion and berating colleagues or subordinates.

7. PROHIBITED CONDUCT

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor Conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

(Note: Serious misconduct by a Councillors means:

- (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or*
- (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or*
- (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or*

- (d) *continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or*
- (e) *bullying of another Councillor or member of Council staff by a Councillor; or*
- (f) *conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or*
- (g) *the release of confidential information by a Councillor.)*

MISUSE OF POSITION

A Councillor must not misuse his or her position:

- a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- b) to cause, or attempt to cause, detriment to the Council or another person.

Circumstances involving the misuse of position by a Councillor include:

- a) making improper use of information acquired as a result of the position he or she held or holds; or
- b) disclosing information that is confidential information within the meaning of section 77(2); or
- c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- e) using public funds or resources in a manner that is improper or unauthorised; or
- f) failing to disclose a conflict of interest as required under this Division.

IMPROPER DIRECTION AND IMPROPER INFLUENCE

A Councillor must not direct, or seek to direct, a member of Council staff:

- a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
- b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under this Act or any other Act; or
- c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

CONFIDENTIAL INFORMATION

A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information.

Councillors agree to comply with their obligations under s77 of the Act in relation to confidential briefings or information and recognise that this obligation extends to ensuring the safekeeping of confidential information.

A Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- a) for the purposes of any legal proceedings arising out of this Act;
- b) to a court or tribunal in the course of legal proceedings;
- c) pursuant to an order of a court or tribunal;
- d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- g) to the extent reasonably required for any other law enforcement purposes.

We acknowledge that we will comply with our obligations under s77 in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

As Councillors we will treat Council Information appropriately by:

- a) not using information gained by virtue of being a Councillor for any purpose other than to exercise our role as Councillors;
- b) Respecting Council's policies in relation to public comments and communications with the media;
- c) Not releasing information deemed "Confidential Information" in accordance with Section 77 of the Act;
- d) Recognising the requirements of the Privacy and Data Protection Act 2014 regarding the access, use and release of personal information;
- e) Adhering to Council policies relating to accessing Council Information.

CONFLICT OF INTEREST

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of Councillors, an audit committee or a section 223 committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

As Councillors, we will comply with all provisions of the Act in regard to interests and conflicts of interest (section 77A to 79).

We agree to comply with the requirements of s81 of the Act in relation to the submission of register of Interests Returns.

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly

altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way.

OTHER LEGISLATIVE REQUIREMENTS

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

8. CHILD SAFE STANDARDS

Victorian organisations that provide services to children will be required under the Child Safety and Wellbeing Act 2005 to ensure that they protect children from harm. This Code aims to protect children and reduce any opportunities for abuse or harm to occur. It also helps Councillors by providing them with guidance on how to best support children and how to avoid or better manage difficult situations. As a Councillor you are responsible for promoting the safety and wellbeing of children and young people who engage with Council by:

- Adhering to all relevant Australian and Victorian legislation and Council policies;
- Raise concerns with the CEO if risks to child safety are identified in any of the activities, facilities, structures, procedures or staffing practices at Council;
- Take all reasonable steps to protect children from abuse;
- Treating children with respect and being a positive role model in your conduct with them;

- Communicating with the children in an age appropriate and realistic manner;
- Listen to and value children and your people's ideas and opinions;
- Setting clear boundaries about appropriate behaviour between yourself and a child;
- Observe professional boundaries with children at all times.

Councillors must not:

- Condone or participate in behaviour with children that is illegal, unsafe or abusive;
- Ignore or disregard any concerns, suspicions or disclosures of child abuse;
- Communicate with a child in ways that are likely to humiliate, frighten or distress the child;
- Use hurtful, discriminatory or offensive behaviour or language with children;
- Subject a child to any form of corporal punishment, social isolation, immobilisation, sexual suggestion, offence or misconduct;
- Direct a child to perform in a sexually provocative or unsafe manner;
- Develop any 'special' relationships with children that could be seen as grooming/favouritism such as the offering of gifts or special treatment;
- Have unauthorised contact with children and young people online, on social media or by phone.

9. ADDITIONAL STATUTORY REQUIREMENTS

Further to the above statutory requirements, Councillors will obey the law including the following:

- a) The Equal Opportunity Act 1995 and refrain from discriminating, harassing or bullying other people and using offensive language in their capacity as a Councillor;
- b) The requirements of the Occupational Health and Safety Act 2004 and have regard to the principles of health and safety. Councillors have the status of employees under the OH&S Act and should ensure that they contribute to a healthy and safe workplace. Councillors should be particularly mindful of this in their interactions with Council officers;
- c) Councillors will also recognise the requirements of the Information Privacy Act 2000 regarding access, use and release of personal information which also applies to Councillors as individuals;
- d) The requirements of the Local Government Act 1989, section 93A governing the conduct of the Council during election periods and Council's Election Period Policy;
- e) The provisions of Council's Meeting Procedure Local Law No 1 of 2013 when participating in Council and Special Committee Meetings;
- f) The Southern Grampians Shire Council Councillor Expenses and Resources Guidelines in respect of administrative procedures and reimbursement of

necessary out of pocket expenses incurred while performing duties as a Councillor or Committee Member.

10. COUNCIL DECISION MAKING

We are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly:

1. We will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
2. We will respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
3. We accept that no councillor can direct another councillor on how to vote on any decision.

11. ACCESS TO AND USE OF COUNCIL INFORMATION

1. We will treat Council information appropriately, by:
 - a) Not using information gained by virtue of our position as a councillor for any purpose than to exercise our role as a councillor
 - b) Respecting the Council's policies in relation to public comments and communications with the media (refer section 8)
 - c) Not releasing information deemed 'confidential information' in accordance with section 77 of the Act (refer section 5)
 - d) Recognising the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.
2. Councillors acknowledge that all requests made by Councillors for briefings from council officers or access to information on council files should be registered and reported. This obligation does not apply to requests for clarification/ explanation of items on a forthcoming council agenda. Councillors seeking information /explanation or wishing to provide feedback on a matter should do so by using the Councillor Requests/Enquiries System by completing and submitting the relevant form to the Chief Executive Officer.

12. USE OF COUNCIL RESOURCES

We commit to using Council resources effectively and economically. We will:

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

Not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes.

Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided.

Ensuring that Council's letterhead or logo are only used with the approval of the CEO to ensure that the letterhead or logo is not used in a way that creates an impression of Council endorsement.

Ensuring that claims for out of pocket expenses are accurate and related strictly to Council business.

13. GIFTS

We will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

We will take all reasonable steps to ensure that our immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

We will not accept gifts either in our role as councillor or where it could be perceived to influence us in our role as a councillor except:

- a) Where the gift would generally be regarded as only having a token value and could not be perceived to influence our actions as a councillor.
- b) Where refusal may cause offence or embarrassment, in which case we will accept the gift on behalf of the Council and the gift becomes the property of the Council.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

We recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

We will record all campaign donations in our "campaign donation return".

14. COMMUNICATION

We recognise that as representatives of the community, we have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

We undertake to comply with the Council's media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with the Act and our policy.

We acknowledge that individual Councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of Council. We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

We will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:

1. State-wide political issues affecting Local Government
2. Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community
3. Issues pertaining to policy and Council decisions
4. Issues relating to the strategic direction of the Council.

The Mayor may nominate a Councillor Delegate or another councillor to make official comment on behalf of the Council, where appropriate.

The CEO is the official spokesperson for all operational matters pertaining to the Southern Grampians Shire Council as an organisation including:

1. Staffing and structure of the organisation
2. Corporate issues relating to service provision or the day-to-day business of Council.

The CEO may nominate a Council officer spokesperson if appropriate.

As individual Councillors we are entitled to express independent views through the media, however we will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

15. PERSONAL DEALINGS WITH COUNCIL

When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter. We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

16. CONFLICT OF INTEREST PROCEDURES

The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, “direct interest”, “indirect interest” and “conflicts of interest”, have the meanings specified in the Act.

We will comply with all the provisions of the Act in regard to Conflicts of Interest:

- a) If a councillor considers that they have a direct or indirect interest in a matter before the Council, a special committee of council or an assembly of Councillors, they have a conflict of interest
- b) If a councillor has a conflict of interest in a matter they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter.

- c) If a councillor has a personal interest in a matter to be considered by the Council or special committee that is not a conflict of interest, and the councillor considers that their personal interest may be in conflict with their public duty to act impartially and in the interest of the whole community, the councillor will declare a conflicting personal interest under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- a) We will give early consideration to each matter to be considered by the Council, any special committee to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest.
- b) We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual councillor and that Council officers cannot offer any advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest.
- c) If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a special committee, or an assembly of Councillors, as well as the Chief Executive Officer.

17. DISPUTE RESOLUTION PROCEDURES

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

The Council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent arbiter.

PHASE 1 – DIRECT NEGOTIATION

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a “direct negotiation” dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of councillors; and
- be signed and dated by the requestor or the requestor’s representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with

the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

PHASE 2 – EXTERNAL MEDIATION

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant’s representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Chief Executive Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

PHASE 3 - INTERNAL RESOLUTION PROCEDURE - ARBITER

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer. An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay;

- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- identify an arbiter to hear the application;
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter;
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process.

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application;
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
 - be removed from any position where the Councillor represents the Council; and
 - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- (c) repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

ENDORSEMENT

We, the undersigned, declare that we will abide by this Councillor Code of Conduct which was adopted by the Council at its meeting on 8 February 2017.

Signatures

Cr Armstrong

Cr Brown

Cr Calvano

Cr Dunkley

Cr McAdam

Cr Rainsford

Cr Sharples